

Internal Revenue Service

Number: **200851023**

Release Date: 12/19/2008

Index Number: 897.06-00; 897.08-00

Department of the Treasury

Washington, DC 20224

[Third Party Communication:

Date of Communication: Month DD, YYYY]

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PLR-137550-08

Date:

September 11, 2008

DO: TY:

Legend

Foreign Corp 1 =

Foreign Corp 2 =

Foreign Corp 3 =

Foreign Corp 4 =

US Partnership =

Subcorp 1 =

US Ltd Partnership =

US Real Property 1 =

Foreign Partnership =

Dear :

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

FACTS

1. Background

The taxpayers are four foreign corporations, Foreign Corp 1, 2, 3 and 4 (hereinafter referred to collectively as “Taxpayers”). Taxpayers raise funds from non-US investors to invest in real estate and real estate-related investments located in the United States. US Partnership, a domestic partnership, was created at the same time that the foreign corporations were created to raise funds from US investors to invest in the same real estate and real estate-related investments. These foreign corporations and the domestic partnership will be collectively referred to herein as “Feeder Funds.”

As funds were periodically raised by one or more of the Feeder Funds, a new domestic corporation was created and those funds were contributed to this new domestic corporation. Each of these newly created domestic corporations (“Subcorps”) constituted a United States Real Property Holding Company within the meaning of section 897(c)(2)¹. The Subcorps used the contributed funds to purchase assets that constituted United States real property interests within the meaning of section 897(c)(1).

The Feeder Funds currently own Subcorps and each Subcorp generally owns a single commercial real property. One of these Subcorps is Subcorp 1. Subcorp 1 owns % of the outstanding interests in US Ltd Partnership 1. The remaining % of the outstanding interests in US Ltd Partnership 1 are owned by third parties. US Ltd Partnership 1 owns all of the interests in US Real Property 1.

¹ Unless otherwise specified, all “section” references are to the Internal Revenue Code of 1986 (the “Code”) and all “Treas. Reg. §” references are the Treasury regulations promulgated thereunder.

2. Proposed Transaction

a. Step 1

Taxpayers propose to form a new Foreign Partnership and to contribute all of their equity interests in the Subcorps, including Subcorp 1, (“Transferred Property”) to the Foreign Partnership in a transaction qualifying under section 721.² Each of Taxpayers represent that, for purposes of section 897(g), the interest in Foreign Partnership that Taxpayers receive in exchange for the Transferred Property is, immediately after the section 721 contribution, a United States real property interest to the extent attributable to United States real property interests of Foreign Partnership. Each of Taxpayers represent that for purposes of section 704(c), Foreign Partnership will adopt the remedial allocation method under Treas. Reg. § 1.704-3(d). Each of Taxpayers also represent that if Foreign Partnership were incorporated, it would not be an investment company within the meaning of section 351(e) and Treas. Reg. § 1.351(c)(1)(ii).

b. Step 2

Shortly after Taxpayers’ contribution of the Transferred Property to Foreign Partnership, US Ltd Partnership 1 will dispose of all its assets, including United States Real Property 1, in a fully taxable transaction described in § 1001. US Ltd Partnership 1 will use the proceeds of the sale to settle any outstanding liabilities and then distribute its remaining assets to its partners, including Subcorp 1, in a complete liquidation. Subcorp 1 will use the proceeds received in the liquidation to settle any outstanding liabilities and then distribute its remaining assets to its shareholders, which include Foreign Partnership and US Partnership, in a complete liquidation pursuant to section 331.

LAW AND ANALYSIS

Section 721(a) provides that no gain or loss shall be recognized to a partnership or any of its partners in the case of a contribution of property to the partnership in exchange for an interest in the partnership.

Section 721(b) provides that section 721(a) shall not apply to gain realized on a transfer of property to a partnership which would be treated as an investment company (within the meaning of section 351(e)) if the partnership was incorporated.

Section 897(a) provides that gain or loss of a nonresident alien individual or a foreign corporation from the disposition of a United States real property interest shall be taken into account as if the taxpayer were engaged in a trade or business within the United States during the taxable year and as if such gain or loss were effectively connected with such trade or business. The term “United States real property interest” (USRPI) includes an interest in real property (including an interest in a mine, well, or other

² US Partnership will not contribute its equity interests in the Subcorps to the Foreign Partnership, but rather will retain its interests in such Subcorps.

natural deposit) located in the United States or the Virgin Islands, and any interest (other than an interest solely as a creditor) in any domestic corporation unless the taxpayer establishes (at such time and in such manner as the Secretary by regulations prescribes) that such corporation was at no time a United States real property holding corporation during the 5-year period ending on the date of disposition of such interest.

Section 897(c)(2) provides that the term “United States real property holding corporation” (USRPHC) means any corporation if the fair market value of its USRPIs equals or exceeds 50 percent of the fair market value of the following: (i) its USRPIs, (ii) its interests in real property located outside the United States, and (iii) any other of its assets which are used or held for use in a trade or business.

Section 897(c)(1)(B) provides that a taxpayer can establish that a corporation was not a USRPHC during the 5-year period ending on the date of the disposition of such interest by showing that such corporation: (i) did not hold any USRPIs on the date of disposition of such interest; and (ii) all of the USRPIs held by such corporation during the 5-year period were disposed of in transaction in which the full amount of gain was recognized.

Section 897(g) provides that the amount of any money and the fair market value of any property received by a nonresident alien individual or a foreign corporation from the sale or exchange of a partnership interest shall be considered as received from the sale of a USRPI to the extent that such money or property is attributable to USRPIs.

With respect to a transaction coming within a nonrecognition provision of the Code, section 897(e)(1) states that such nonrecognition provision will apply to a transaction only in the case of an exchange of a USRPI for an interest the sale of which would be subject to taxation. The term “nonrecognition provision” includes any provision under the Code for not recognizing gain or loss. Nonrecognition provisions relevant to this section include, but are not limited to, section 721. Treas. Reg. § 1.897-6T addresses the application of any nonrecognition provision to a transfer by a foreign person under section 897(e). Treas. Reg. § 1.897-6T(a)(1) states that a nonrecognition provision will apply to a transfer by a foreign person of a USRPI on which gain is realized only to the extent that the transferred interest is exchanged for a USRPI which, immediately following the exchange, would be subject to U.S. taxation upon its disposition, and the transferor complies with the filing requirements of Treas. Reg. § 1.897-5T(d)(1)(iii).

Treas. Reg. § 1.897-5T(d)(1)(iii)(H) requires that the taxpayer file a declaration that states that the transferor shall treat any subsequent sale, exchange, or other disposition of the USRPI as a disposition that is subject to U.S. taxation, notwithstanding the provisions of any U.S. income tax treaty or intervening change in circumstances.

Accordingly, to obtain nonrecognition treatment for the transfer, Taxpayers must meet the requirements set forth in Treas. Reg. § 1.897-6T(a)(1). All of the requirements of section 1.897-6T(a)(1) have been met in this case. Prior to this transfer, Taxpayers held USRPIs within the meaning of section 897(a) that would be subject to U.S. taxation. Taxpayers’ equity interests in Subcorps constituted USRPIs because the

Subcorps were USRPHCs within the meaning of section 897(c)(2). Taxpayers exchanged these equity interests in Subcorps for interests in Foreign Partnership, which also constituted USRPIs pursuant to section 897(g). Taxpayers' interests in the Subcorps immediately before the transaction and its interests in Foreign Partnership immediately after the transaction will be subject to U.S. taxation in the same amount because Foreign Partnership will be using the remedial allocation method under Temp. Treas. Reg. § 1.704-3(d).

In addition, any gain realized by Foreign Partnership on the subsequent liquidation of Subcorp 1 pursuant to section 331 will not be gain within the meaning of section 897. As of the date of the liquidation, the interest in Subcorp 1 will no longer be considered a USRPI because Subcorp 1 will no longer hold any USRPIs and will have disposed of all its USRPIs in taxable transactions within the five year period prior to the liquidation. Section 897(c)(1)(B).

CONCLUSION

Based solely on the information submitted and on the representations made, and provided that for purposes of section 704(c) Foreign Partnership will adopt the remedial allocation method under Temp. Treas. Reg. § 1.704-3(d), and also provided that the Taxpayers comply with the filing requirements of Temp. Treas. Reg. § 1.897-5T(d)(1)(iii), we rule that the Taxpayers' transfer of the Transferred Property in exchange for partnership interests in Foreign Partnership shall constitute a nonrecognition exchange pursuant to sections 721 and 897(e) and Temp. Treas. Reg. § 1.897-6T(a)(1).

In addition, based solely on the information submitted and on the representations made, and taking into account Taxpayers' declarations made pursuant to Temp. Treas. Reg. § 1.897-5T(d)(1)(iii)(H) in connection with Step 1 of the Proposed Transaction, we rule that any gain Foreign Partnership realizes in connection with the liquidation of Subcorp 1 is not gain realized in connection with the disposition of a USRPI under section 897 provided that Subcorp 1 satisfies the exclusion described in section 897(c)(1)(B).

Except as specifically set forth above, we express no opinion concerning the tax consequences of the Proposed Transaction under any other provision of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding section 1445, or other international tax consequences resulting from the Proposed Transaction.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Thomas D. Beem
Senior Technical Reviewer, Branch 4
(International)

cc: